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Citizens Utility Board)	CHIEF CLERK'S OFFICE
•) 00-0620	
Request for an investigation into)	
the current structure of the Nicor)	
Customer Select Pilot Program and) '	
the Proposed Changes filed)	
August 10, 2000, Meet the Public) (Consol.)	
Interest Standards and Other)	
Requirements Set Forth in the)	
Public Utilities Act. 220 ILCS)	
5/4-101, 220 ILCS 5/8-101; 220 ILCS)	
5/8-102.)	
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Northern Illinois Gas Company)	
d/b/a Nicor Gas Company) 00-0621	
Proposed changes to Riders 15)	
and 16 and related provisions.)	
(Tariffs filed on August 11, 2000)	,)	

BRIEF ON EXCEPTIONS OF NORTHERN ILLINOIS GAS COMPANY d/b/a NICOR GAS COMPANY

Stephen J. Mattson Angela D. O'Brien Mayer, Brown & Platt 190 South LaSalle Street Chicago, Illinois 60603 (312) 782-0600

Barbara E. Cohen 2710 Deering Drive Odessa, Texas 79762-5124 (915) 550-2077

Dated: June 7, 2001

TABLE OF CONTENTS

Page

I.	to De	The HEPO Erroneously Adopts the Flawed Methodology of Mr. Mierzwa to Deny the Company Recovery of Incremental Costs Incurred in Offering Customer Select		
II.		HEPO Should be Revised to Reject Single Billing Through Account ats		
	A.	The HEPO's Requirement that Nicor Gas Relinquish its Right to Bill its Customers is Contrary to Law and to the Intent of the General Assembly		
	В.	The HEPO's Position on Single Billing by Suppliers Deviates from the Commission's Past Policy without Justification		
	C.	The HEPO Does Not Address the Myriad of Consumer Protection Concerns Created by Single Billing by Suppliers22		
	D.	The HEPO Fails to Address the Increased Credit Risk to Nicor Gas that would Result from Single Billing by Suppliers		
	E.	The HEPO Fails to Recognize that Implementation of Single Billing by Suppliers would Require Extensive Programming Changes to the Company's Billing System, Which Would be Both Costly and Time-Consuming, and Which Literally Could Not Be Completed by August 1, 2001		
	F.	The HEPO Does Not Provide Sufficient Direction to Implement Single Billing by Suppliers		
III.	to Su	The HEPO Erroneously Orders Nicor Gas to Eliminate its Billing Charge Suppliers Who Voluntarily Contract with the Company for Billing ervices		
IV.	Com	Fundamental Differences Among the Services Provided Under the Company's Transportation Tariffs Make Imposition of "Substantially Similar" Non-Performance Charges Inappropriate		
V.	Tech	nical Changes and Clarifications		
	A.	Timing of Enrollment and the Effectiveness of Revised Tariff Sheets		
	B.	Approval of Rider 6 and Terms and Conditions41		
	C.	Letter of Agency		
	D.	Historical Bill Information		
VI.	Conc	clusion		

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BRIEF ON EXCEPTIONS OF NORTHERN ILLINOIS GAS COMPANY <u>d/b/a_NICOR GAS COMPANY</u>

Pursuant to Section 200.830 of the Commission's rules, Northern Illinois Gas Company d/b/a Nicor Gas Company ("Nicor Gas" or "Company") hereby submits its brief on exceptions to the Hearing Examiners' Proposed Order ("HEPO") dated May 22, 2001. Nicor Gas takes exception to four conclusions contained in the HEPO:

- First, the Company takes strong exception to the HEPO's determination that purported savings from gas storage inventory attributable to expansion of Customer Select will offset all of the incremental costs of the program, and that the Company is not entitled to impose a monthly Group Charge, a Group Additions Charge, or an Account Charge -- meaning that suppliers would literally be able to participate in the Customer Select program for free.
- Second, the Company takes exception to the HEPO's arbitrary determination that it must permit Customer Select suppliers to act as account agents for billing purposes.

- Third, Nicor Gas takes exception to the HEPO's determination that it is not entitled to collect a \$0.50 charge under voluntary billing service contracts entered into with Customer Select suppliers.
- Fourth, Nicor Gas excepts to the HEPO's directive that the Company file additional tariff language that would purportedly be needed to implement penalties for non-Customer Select customers that are "substantially similar" to the Operational Flow Order ("OFO") Non-Performance Charge contained in Rider 16.
- In addition, the Company seeks clarification of several other requirements that would be imposed under the HEPO, as resolution of these issues will have significant impacts on the cost or timing of implementing any of these requirements that are ultimately adopted by the Commission.
- 1. The HEPO Erroneously Adopts the Flawed Methodology of Mr. Mierzwa to Deny the Company Recovery of Incremental Costs Incurred in Offering Customer Select.

The HEPO (p. 44) acknowledges that the Commission has authority to approve recovery of post-general rate case incremental costs (as it has traditionally and consistently done), but then determines that Nicor Gas is not entitled to recover any of the incremental costs incurred in implementing Customer Select through supplier fees, because these costs will purportedly be offset by savings associated with reduced gas storage inventory carrying costs. HEPO, pp. 44-46. To state the obvious, unless the HEPO's conclusion on this issue is reversed by the Commission, suppliers participating in Customer Select will do so as "free riders" — a result that the Company believes would be utterly wrong. For this reason, Nicor Gas takes strong exception to the HEPO's reasoning and result on this issue, and to the HEPO's erroneous reliance on Mr. Mierzwa's fundamentally flawed methodology and calculations.

¹ The HEPO (p. 46) would permit the Company to impose a \$2000 Supplier Application Charge but, as Mr. Harms explained, the revenue impact of this one-time charge is minimal. Nicor Gas Ex. F, p. 5 (Harms Surrebuttal)

<u>First</u>, while the Company generally agrees that ongoing cost savings related to items included in its base rates experienced by utilities between general rate cases should ultimately be passed on to customers -- <u>not</u> suppliers -- the appropriate time and manner for reflecting such savings -- if any result-- is in the utility's next general rate case. Nicor Gas Ex. E, p. 22 (Harms Rebuttal). Only in the context of such a case could overall costs and savings related to items included in base rate recovery be accurately evaluated in relation to each other.

Of course, like any other utility, Nicor Gas has experienced changes in many of the items included in base rate recovery, such as its operating expenses, inventory, investments in rate base, customers, and peak day load, among many other things, since its last general rate case in 1996. *Id.* Some of these changes have increased the Company's costs, and some have resulted in savings. Picking and choosing among these changes to items included in base rate recovery in order to identify a potential savings to offset against the incremental costs of Customer Select, however, wholly undercuts the well-established principle that the Commission has the power to authorize recovery of incremental costs incurred by a utility subsequent to a general rate case from those who cause the costs to be incurred through a rider or other mechanism. *Citizens Util. Bd. v. Commerce Comm'n*, 166 Ill. 2d 111, 136-37, 651 N.E.2d 1089, 1102 (1995); *Archer-Daniels-Midland Co. v. Commerce Comm'n*, 184 Ill. 2d 391, 401, 704 N.E.2d 387, 392 (1998).

As Mr. Harms explained, the Company's last general rate case used a 1996 test year. Shortly after the rate case was concluded, the Company proposed Customer Select as a new program, incurring incremental costs that were not reflected, by definition, in its

newly established base rates. Nicor Gas then provided cost justification to Staff, and the Commission approved the fees and charges necessary to recover the incremental costs associated with Customer Select. The charges approved by the Commission in 1997 are exactly the same as the Company proposes to impose in this proceeding, except that the Monthly Account Charge has decreased from \$3 in 1997 to \$1 now. In other words, in this proceeding the Company is merely proposing to maintain supplier charges that are the same as or lower than the charges that the Commission approved in 1997, with the same base rates that were approved in 1996 and in effect in 1997. Nicor Gas Ex. E, pp. 22-23 (Harms Rebuttal).

Engaging in selective speculation about post-rate-case changes in a utility's costs and revenues reflected in base rates to offset recovery of incremental costs, not contemplated when the utility's base rates were set, would obviously discourage utility innovation or force utilities to file general rate cases much more often. Neither result would be desirable or in the public interest.

Second, it is not appropriate to eliminate the Customer Select supplier charges to reflect purported carrying cost savings due to gas storage inventory reductions — and to redirect those purported savings to suppliers as the HEPO would do — because there is no reliable way to predict either the level of inventory reductions that will occur, or what the associated cost savings (if any) will be. This is because the Company's proposal to expand Customer Select includes a number of changes to the program that will significantly impact storage activity. For example, Nicor Gas proposes to permit suppliers to carry over larger imbalances between deliveries, storage activity, and use which will require the Company to increase the amount of gas it holds in storage for the

Customer Select program. In addition, since customers can change suppliers once a month, depending on the timing of customers moving to or from sales service and between suppliers and the time of year when the moves occur, the Company's storage inventory could be either positively or negatively impacted. Nicor Gas Ex. E., pp. 24-25 (Harms Rebuttal). Moreover, the calculation used by Mr. Mierwza and the HEPO assumes that Nicor Gas will maintain no storage inventory for Customer Select customers, which is plainly and objectively incorrect. See GCI Ex. 3.0, pp. 7-8.

<u>Third</u>, it is clear beyond question that Mr. Mierzwa's calculations of potential savings in gas inventory carrying costs -- which were adopted by the HEPO -- are fundamentally flawed and should not be accepted by the Commission.

While the HEPO (p. 46) summarily dismisses Mr. Harms' calculation of the maximum possible savings due to gas inventory (26 cents per customer per month) as based on outdated gas costs from the Company's 1996 general rate case, most of the difference between Mr. Harms' calculation and Mr. Mierzwa's calculation is attributable to serious methodological problems with Mr. Mierzwa's approach (discussed below), and not to an increase in gas costs. In fact, the only gas cost difference between Mr. Mierzwa's calculation (\$1.74 per customer per month) and Mr. Harms' calculation (\$0.26 per customer per month) is that Mr. Harms used the 1996 test year gas cost. By way of comparison, the Company's gas supply charge was \$0.3333 per therm for June, 1996, while Mr. Mierzwa used a gas supply charge of \$0.40 per therm. Using the updated gas supply charge of \$0.40 with Mr. Harms' proper methodology would only increase Mr. Harms' monthly \$0.26 figure by 20%, to \$0.31.

A far more fundamental difference between Mr. Mierzwa's calculation and Mr. Harms' calculation is that Mr. Mierzwa determines and assigns all of his presumed savings based on the peak day usage of a residential space heat customer² (see GCI Ex. 3.0, pp. 7-8), which is directly contrary to the Company's actual Commission-approved rate design. In theory, as the Commission is aware, the Company has historically agreed with the peak day approach and has argued consistently in every Nicor Gas rate case where cost of service has been an issue that peak day demand by class is the most appropriate way to assign all demand related costs, including gas storage inventory costs. See, e.g., Northern Illinois Gas Co., Docket No. 95-0219 (April 3, 1996), 1996 Ill. PUC LEXIS 204, *104-105; Northern Illinois Gas Co., Docket No. 88-0277 (June 21, 1989), 1989 Ill. PUC LEXIS 150, *16-23. However, CUB has consistently argued -- directly contrary to the position of its witness in this case -- that a substantial portion of demand related costs should be allocated on a volumetric basis. Northern Illinois Gas Co., Docket No. 95-0219, (slip op. at 48), 1996 Ill. PUC LEXIS 204, *107-108; The Peoples Gas Light & Coke Co., Docket No. 95-0032 (Nov. 8, 1995); 1995 III. PUC LEXIS 732, *88-89. In fact, in the Company's most recent rate case, CUB took the position that 50% of all demand related costs should be allocated to customers on a volumetric basis. Northern Illinois Gas Co., Docket No. 95-0219 (slip op. at 48), 1996 Ill. PUC LEXIS 204, *104-109. Most significantly, however, in its order in the Company's 1996 rate case the Commission ultimately adopted the position then advocated by Staff, using an

Mr. Mierzwa multiplies the average residential heating customer's estimated maximum (peak) day use (17 therms) by 26 to obtain his version of the seasonal storage capacity that Nicor Gas assigns to the customer (442 therms). GCI Ex. 3.0, pp. 7-8 (Mierzwa Rebuttal).

average and peak allocation methodology that incorporates a sizeable volumetric allocation of demand costs. Id., slip op. at 47, 1996 Ill. PUC LEXIS at *109-110.

Because Mr. Mierzwa's methodology is directly contrary to the Staff-sponsored methodology the Commission directed the Company to use in assigning and collecting costs in its 1996 rate case, it is patently inappropriate to use it, as the HEPO proposes to do, to calculate the purportedly avoided costs of Customer Select. Obviously, the only costs that Nicor Gas could even conceivably avoid as a result of expanding Customer Select are costs that are actually reflected in its base rates. Accordingly, any calculation of costs avoided, or saved, as a result of expanding Customer Select, must necessarily be consistent with the Company's Commission-approved rate design methodology.

One important reason why CUB consistently argues, in a rate case setting, in favor of a volumetric approach to cost allocation is that a volumetric approach would assign fewer costs to residential space heating customers than would a peak demand methodology. Northern Illinois Gas Co., Docket No. 95-0219, 1996 Ill. PUC LEXIS *109-110. Ironically, in the Company's most recent general rate case, both CUB and Staff vigorously and successfully opposed use of a peak day methodology for allocating costs. But in this case, those same parties have abruptly reversed those positions to advocate adoption of Mr. Mierzwa's peak day methodology for allocating purportedly avoided costs or savings. While, as noted above, the Company agrees with use of a peak day approach on a theoretical basis, there can be no doubt that the Commission must use

³ Because residential space heating customers use proportionately more gas on a peak day in relation to year-round use than other customer classes, an allocation methodology based on peak demand would allocate relatively more costs to the residential class, while

a consistent methodology to allocate both savings and costs. Because the Commission adopted Staff's average and peak allocation methodology in the Company's last rate case to allocate costs, including gas storage inventory carrying costs, the HEPO's use of a peak demand methodology to allocate purported gas storage inventory savings is plainly unfair and unreasonable, and should not be adopted by the Commission.

In addition to the problem with the cost allocation methodology used by Mr. Mierzwa and adopted by the HEPO, the \$1.74 calculation contains a number of other obvious flaws. For example, Mr. Mierzwa's calculation assumes that Nicor Gas maintains storage inventory at 60% of maximum capacity, based on the Company's 2000 average for total storage. See HEPO, p. 45, GCI Ex. 3.0, pp. 7-8. But this 60% factor would objectively have been reduced if he had used a 13-month weighted average, as is universally used to calculate the value of storage inventory in Illinois rate cases. 83 Ill. Adm. Code 285.2075; Northern Illinois Gas Co., Docket No. 95-0219 (April 3, 1996), 1996 Ill. PUC LEXIS 204, *24. Similarly, his 60% factor would be reduced if Mr. Mierzwa had properly separated out gas inventory for sales customers, which is the basis he used in calculating his purported savings in carrying costs. Instead, the total storage inventory erroneously used by Mr. Mierzwa to calculate the 60% factor includes both non-Customer Select transportation storage and third-party storage. Because third party storage and non-Customer Select storage are used primarily for large industrial, commercial and power generation needs, the patterns of use for that storage are materially different than they are for storage used to support sales service and Customer

a more volumetric methodology would allocate relatively fewer costs to residential customers.

Select. Mr. Mierzwa's failure to distinguish among types of storage is a further reason why his calculation is objectively wrong.

Moreover, Mr. Mierzwa and the HEPO base their calculation of the alleged savings of \$1.74 per customer on the peak day gas usage of an average residential space heating customer. GCI Ex. 3.0, p. 7 (Mierzwa Rebuttal); HEPO, p. 45. This wholly distorts any possible savings attributable to Customer Select, because program eligibility is open to <u>all</u> gas customers, not just residential customers, and not just space heating customers.

Furthermore, Mr. Mierzwa's methodology does not take into account diversity, i.e., the timing of peak gas use by various customers and customer classes. This means that, even if Mr. Mierzwa's calculations were valid for a single residential customer, group savings could not be properly calculated as the sum of each individual customer's savings. For this reason, for example, the Company's Terms and Conditions and Rider 16 refer to the "Maximum Daily Contract Quantity" for a Customer Select group, rather than merely summing the Maximum Daily Contract Quantity of individual accounts. See Nicor Gas Ex. D, Schedule AEH-4, pp. 1, 8 (Harms Direct). The impact of diversity, load factors, and volumes of various classes of customers means that, even if the \$1.74 per customer cost savings were correctly calculated (which they are not), those "savings" could not simply be applied to each customer moving to Customer Select.

Finally, Mr. Mierzwa's \$1.74 "cost saving" calculation is patently unreasonable on its face. As the HEPO (p. 45) notes, the maximum potential savings in gas inventory costs due to Customer Select, based on data from the Company's last rate case (which used a 1996 test year), was \$0.26 per month for all residential customers. In other words,

\$0.26 -- not anything even approaching \$1.74 -- is the level of cost reflected in the Company's base rates which could be avoided if the Company held <u>no</u> gas in storage for Customer Select customers. Nicor Gas Ex. E, pp. 23-24 (Harms Rebuttal). In evaluating the facial reasonableness of Mr. Mierzwa's \$1.74 "cost saving" calculation, the Commission should recognize that the Company's Gas Supply Cost ("GSC") for June, 1996 was 33.33 cents per therm, while its GSC for June, 2001 is 40 cents, representing a 20% increase in cost. Mr. Mierzwa's purported credit of \$1.74, on the other hand, implies that gas costs have increased by almost 550% since the Company's 1996 general rate case -- a price increase that is not only incorrect but absurd on its face.

A second common sense way to check the reasonableness of the \$1.74 "cost saving" offset adopted by the HEPO is to look at total gas inventory savings if all 1.8 million Nicor Gas sales customers hypothetically chose to participate in Customer Select. Pursuant to the Company's 1996 rate case order, Nicor Gas collects through its sales distribution rates approximately \$9 million in total annual carrying costs for gas storage inventory from all sales customers. CUB Cross Ex. 1 (CUB 4.1). In contrast, if Mr. Mierzwa's (and the HEPO's) carrying cost figure of \$1.74 per customer per month were applied to all 1.8 million sales customers, it would amount to \$37.6 million (\$1.74 x 1.8 million x 12) -- more than 4 times the amount established in the rate case. Even allowing for a 20% increase in gas costs, the calculation adopted by the HEPO is clearly inflated by 380%.

In sum, the HEPO's reliance on Mr. Mierzwa's calculation of hypothetical gas inventory carrying cost savings is misplaced because that calculation allocates purported cost savings on a basis directly contrary to the Commission's cost allocation

determination in the Company's last general rate case, fails to segregate the appropriate storage inventory that the Company holds for sales customers, fails to consider the usage patterns of all customers eligible for Customer Select, fails to take into account the effect of diversity, and fails to recognize that the Company will, in fact, continue to incur gas storage inventory costs in serving Customer Select customers.

Consequently, even if the Commission determines that it is appropriate to offset the Company's Customer Select incremental costs with hypothetical gas inventory carrying cost savings, and to arbitrarily give those savings to suppliers, it should use the far more realistic maximum potential savings calculation of 26 cents per month per residential customer presented by Mr. Harms, or the gas-cost-adjusted figure of \$0.31 per month, and not the radically inflated figure proposed by Mr. Mierzwa.

If the Commission were to adopt Mr. Harms' gas-cost-adjusted figure of 31 cents per customer per month, it would reduce the "break-even" monthly Account Charge justified by the Company from \$1.03⁴ to \$0.72, and would have no impact on the other supplier charges. However, as Mr. Harms explained, the Company will continue to incur gas inventory carrying costs for Customer Select customers, because customers will now switch more frequently between suppliers and between sales service and Customer Select, and because suppliers will be permitted to carry forward to subsequent months

⁴ While Nicor Gas justified a "break even" monthly Account Charge of \$1.03 based on cost estimates, the Company only requested a charge of \$1.00. Nicor Gas Ex. E, p. 9 and Rebuttal Schedule AEH-2 (Harms Rebuttal). This \$1.03 is not to be confused with the \$1.06 "per customer charge" relied upon by the HEPO (p. 45). Mr. Harms testified that \$1.06 is the estimated combined monthly cost to a Customer Select supplier, expressed on a per-customer basis, of the monthly Account Charge, the monthly Group Charge, and the Group Additions Charge, assuming a group of 10,000 customers and 5% group

larger imbalances between gas use and deliveries. Nicor Gas Ex. E, pp. 24-25 (Harms Rebuttal). Consequently, it is wholly unrealistic to assume that the Company would save 100% of gas inventory carrying costs associated with Customer Select. Assuming a 50% reduction in gas inventory carrying costs, the monthly Account Charge would be reduced by 15 cents (31 cents x .50), from \$1.03 to \$0.88 -- again, with the other charges remaining as proposed.

For the foregoing reasons and the reasons explained in detail in Nicor Gas' testimony and the Company's Initial Brief (pp. 6-7, 26-32) and Reply Brief (pp.12-26), the Company urges the Commission to approve continuation of the Company's current monthly Group Charge of \$200, its Group Additions Charge of \$10, and its Monthly Account Charge of \$1.00. These realistic, cost-based charges are all less than or equal to the Commission-approved Nicor Gas Customer Select charges currently in effect, as well as to the comparable charges approved by the Commission for Peoples Gas' Small Customer Transportation Program. Nicor Gas Ex. E, pp. 8, 9–12. Accordingly, the Commission should revise the HEPO (pp. 44-46) as follows:

8. Commission's Conclusion

In determining the reasonableness of the charges to suppliers under Customer Select, it is appropriate to consider not only the costs that the charges are intended to recover but also any savings experienced by Nicor Gas that are attributable to Customer Select. GCI witness Mierczwa testified that Nicor Gas experiences gas storage inventory cost savings that are attributable to Customer Select. Nicor Gas asserts that consideration of any such savings constitutes impermissible single issue ratemaking. The Commission disagrees. Single issue ratemaking occurs when a utility's base rates are adjusted to reflect a change in one component of a utility's revenue requirement without consideration of changes in all other components of revenue requirement. In this proceeding, no party is proposing any change in Nicor Gas' base rates. As noted by

additions. Nicor Gas Ex. E, p. 3 (Harms Rebuttal). Under the Company's current and proposed tariffs, \$1.00 of this \$1.06 is recovered through the monthly Account Charge.

Nicor Gas, the Illinois Supreme Court has held that the rule against single issue ratemaking "does not circumscribe the Commission's ability to approve direct recovery of unique costs through a rider when circumstances warrant such treatment." *Citizens Util. Bd.*, 166 Ill. 2d at 138, 651 N.E. 2d at 1102 (1995). In considering whether circumstances warrant recovery of Nicor's Customer Select costs under Rider 16, we first consider whether Nicor Gas will incur any savings to Nicor Gas that are attributable to Customer Select should not be ignored.

Nicor Gas witness Harms testified that Nicor Gas' proposed monthly Group Charge of \$200, monthly Account Charge of \$1.00 and Group Additions Charge of \$10.00 are small on a per customer basis. For example, he noted that a group with 10,000 customers and with five percent (500 customers) group additions would have a monthly average per customer charge of approximately \$1.06. (Nicor Gas Ex. E at 3)

In recommending elimination of the Group Charge, Account Charge, Group Additions Charge, and the \$0.50 per bill charge that is assessed when Nicor Gas performs the billing function for suppliers' charges to customers, CUB/Cook County assert that the gas storage inventory cost savings experienced by Nicor Gas that are attributable to Customer Select exceed the additional cost associated with the development, implementation and operation of Customer Select. In reaching this conclusion, they compare the \$1.74 per month gas inventory storage savings calculated by Mr. Mierczwa when an average residential customer switches to Customer Select to the \$1.06 per month cost calculated by Mr. Harms.

Mr. Mierczwa explained his calculation of the \$1.74 per month savings in the following manner. Under Customer Select, a supplier serving a residential heating customer is assigned storage capacity equal to 26 times the customer's maximum daily use. The maximum daily use of an average residential heating customer is 17 therms; thus the supplier would be assigned 442 therms of storage capacity. In addition, a supplier is assigned storage capacity for balancing purposes equal to 6 times the customer's maximum daily use, or 102 therms. Therefore, in total, a supplier serving a residential heating customer is assigned 544 therms (442 therms plus 102 therms) of storage capacity. Nicor Gas determines how storage is to be utilized by suppliers under Customer Select. It is reasonable to assume that Nicor Gas will direct suppliers to use storage in a fashion similar to that used by Nicor Gas to provide sales service. In the year 2000, on average, Nicor Gas maintained storage inventory at 60 percent of maximum capacity. Assuming Nicor Gas' current storage carrying charge factor is comparable to that in its last rate proceeding of 16 percent, at a 40 cents per therm cost of gas, Nicor Gas' storage inventory would decrease by \$1.74 per month when an average-residential customer switches to Customer Select. (GCI Ex. 3.0 at 7-8)

In response to Mr. Mierzwa's calculated savings of \$1.74 per month, Nicor Gas states that the storage inventory cost included in its base rates is approximately \$0.26 per month per residential customer. In calculating the savings of \$0.26, Nicor Gas witness Harms indicated that in Nicor Gas' 1996 rate case, approximately \$0.0027 per therm of throughput was included in base rates for storage inventory carrying costs. He also noted

that for the 12 months ending October, 2000, the average residential customer's use was 1,134 therms. (Nicor Gas Ex. E, pp. 23-25) As noted above in subsection 6, Nicor Gas also contends that there is no way to predict accurately the level of gas storage inventory reductions, if any, attributable to Customer Select. In its Brief on Exceptions, Nicor Gas further argues that Mr. Mierzwa's calculation is fundamentally flawed, because it is directly contrary to the rate design mandated by the Commission in the Company's 1996 rate case, is based on a 12-month average of Nicor Gas' total storage utilization rather than a 13-month weighted average of gas inventory for sales customers only, it is calculated based on the gas usage of residential space heating customers rather than all eligible Customer Select customers, and it does not take into account diversity, load factors, and volumes of various classes of customers. Nicor Gas also contends that the \$1.74 charge is unreasonable on its face, as it implies that gas costs have increased over 500 percent since Nicor Gas' 1996 rate case which, the Commission recognizes, is objectively incorrect.

The Commission has examined the calculations of gas storage inventory savings by Mr. Mierczwa and Mr. Harms and finds that Mr. Mierczwa's is more appropriate. The Commission agrees with CUB/Cook County that Mr. Harms calculation is fundamentally flawed since it is based on outdated gas costs from its 1996 rate case. In contrast, Mr. Mierczwa's calculation is based on current dollars and is accepted. Having accepted Mr. Mierczwa's calculation, the Commission concludes that the monthly Group Charge, monthly Account Charge and the Group Additions Charge should be eliminated since the costs those charges are intended to recover are exceeded by Nicor Gas' savings in gas storage inventory carrying charges attributable to Customer Select. for the reasons identified by Nicor Gas. Moreover, we decline to accept any calculation of possible savings in gas inventory costs because, as Mr. Harms testified, it is not possible to predict the impact on storage inventory of the supplier and customer-friendly changes Nicor Gas proposes to the Customer Select program in this proceeding.

The Commission finds that the evidence in this proceeding supports Nicor Gas' proposal to continue the supplier fee structure that is presently in place in the Customer Select Pilot Program. We also find that Nicor Gas' supplier fee structure is just and reasonable and cost-based. We further note that the fees proposed by Nicor Gas are the same or lower than those we have previously approved for Nicor Gas, as well as under the Peoples Gas Small Customer Transportation program in Docket No. 97-0297.

The Commission likewise rejects Staff's position that the Monthly Group Charge of \$200 is discriminatory, and that smaller groups should be charged only \$100. We find no evidence that smaller groups require less staff time to service the group. Nor do we find any empirical or evidentiary basis for Staff's proposed dividing line of 10,000 members per group. Accordingly, the Commission rejects Staff's proposed adjustment to the Monthly Group Charge.

The Commission also finds that Nicor Gas' Monthly Account Charge of \$1 per account should be adopted, and we reject Staff's proposal to reduce the Monthly Account Charge to \$0.88. We find Staff's rationale for denying recovery of \$435,000 in annual

unassigned Customer Select costs, and other forecasted costs, unpersuasive. The Commission finds the costs included in the Monthly Account Charge to be properly recoverable, and consistent with generally accepted cost of service study methods.

The Commission further rejects Staff's assertion that the \$10 Group Additions
Charge contained in Rider 16 could be a barrier to entry, and should therefore be reduced
or spread over all customers through a \$0.04 addition to the Monthly Account Charge.
The evidence shows that the Group Additions Charge is applied whenever a group adds a
customer that is switching from another supplier's group, and is designed to recover costs
associated with processing the change request, including any related inquiries and/or
disputes. We find it appropriate to impose the charge on suppliers who switch customers,
as they cause the costs to be incurred.

The Commission further finds that Nicor Gas' actual experience with transportation programs in general, and with Customer Select, refutes Staff's "entry barrier" hypothesis. The evidence shows that customer-owned gas transported on Nicor Gas' system constitutes about half of the Company's throughput, and Customer Select has grown each year of the Pilot Program and continues to gain momentum. The Commission finds no empirical evidence to establish that the \$10 Group Additions Charge or any other supplier charge -- all of which have been in effect for three years - have deterred competition. The Commission notes that more customers presently participate in Customer Select than in all the electric programs in the entire State of Illinois.

Turning to the \$0.50 per bill charge assessed by Nicor Gas when it performs the billing for the supplier's charges to customers under Customer Select, the Commission notes that CUB/Cook County assert that this charge is not listed in Nicor Gas' Customer Select tariffs. Nicor Gas did not dispute this assertion, nor did it present any evidence as to the costs associated with this single billing. Since Nicor Gas did not justify this charge, it is ordered to cease assessing this charge. Nicor Gas' revisions to this paragraph are discussed in Section III below.

The remaining charge that is subject to dispute is the \$2000 Supplier Application Charge. Nicor Gas indicates that costs totaling \$2,095 are recovered through this charge. Staff accepted all of Nicor Gas's cost support for this charge, except for program training costs. Staff concludes that program training costs are \$350, rather than the \$1,060 indicated by Nicor Gas. The training costs have two components: the costs of a visit with the supplier and the cost of a training manual. While Nicor Gas indicates that the visit with a supplier involves 24 hours of its staff's time at a cost of \$960, Staff concludes that the training during the supplier visit can be accomplished in eight hours at a cost of \$320. Having reviewed the list of issues that are discussed during the visit and Nicor Gas' testimony that three different Nicor Gas employees are needed to train the suppliers' employees, the Commission concludes that Nicor Gas has justified its position that 24 hours of its employees' time are required to provide training during the visit. Accordingly, Staff's position is rejected. Staff also concludes that the cost of the training manual is \$30, rather than the \$100 indicated by Nicor Gas. Staff eliminates the costs of

updates/revisions to the current manual on the grounds that such costs are non-recurring expenses that should not be recovered from every new supplier. As pointed out by Nicor Gas, however, the manual will need to be updated and revised to reflect the outcome of this proceeding. The Commission determines that Nicor Gas has justified the \$100 cost of the training manual. Even if the \$70 disallowance proposed by Staff were accepted, the total of the remaining costs recovered through the Supplier Application Charge would be \$2,025. The Commission concludes that the \$2,000 Supplier Application Charge is cost-justified and is approved.

Finally, we reject the position of CUB/Cook and the People that all supplier charges should be eliminated as anticompetitive and unnecessary (i.e., that suppliers should be able to participate in Customer Select for free). First, we note that no Customer Select suppliers and no prospective suppliers actively participated in this proceeding to protest the allegedly anticompetitive charges. In any event, the evidence contradicts this claim, as twelve suppliers have chosen to participate in the Customer Select Pilot Program, with the same or higher charges. Moreover, we note that Nicor Gas has had similar administrative charges in effect for other transportation customers for over 12 years. During that time period, the share of transportation gas has risen to 50% of the Company's annual throughput. We conclude that the Company's charges are not hindering competition or discouraging suppliers and marketers from participating in Nicor Gas' service territory.

II. The HEPO Should be Revised to Reject Single Billing Through Account Agents.

The HEPO concludes (p. 28) that single billing by suppliers should be permitted through agency arrangements between Customer Select suppliers and their customers.

Nicor Gas takes exception to this determination. In reaching its conclusion, the HEPO erroneously ignores a host of legal and practical problems that would result from single billing by unregulated Customer Select suppliers raised not only by the Company, but by Peoples Gas and North Shore, CUB, Cook County, and the People.

A. The HEPO's Requirement that Nicor Gas Relinquish its Right to Bill its Customers is Contrary to Law and to the Intent of the General Assembly.

The HEPO fails to address the threshold issue of whether the Commission has authority to require (as opposed to permit) single billing through account agency. As a matter of law, the Commission does not. In 1997, the General Assembly enacted the

Electric Service Customer Choice and Rate Relief Law. 220 ILCS 5/16-101 et seq. (hereinafter "Choice Law"). Among other things, the Choice Law requires electric utilities to offer single billing service to Alternative Retail Electric suppliers ("ARES"). See 220 ILCS 5/16-118(b). However, the General Assembly did not establish a parallel requirement with respect to gas suppliers, even though House Bill 362, which amended the Public Utilities Act ("Act") by adding Article XVI, also contains several amendments to the Act that apply to gas utilities.⁵

Moreover, the General Assembly provided for single billing by ARES as part of a package of legislation in which it also provided that ARES must meet minimal consumer-oriented standards and would be subject to a degree of regulation by the Commission.

See 220 ILCS 5/16-115, 5/16-115A, 5/16-115B, 5/16-123. Among other things, ARES are subject to certification by the Commission (ILCS 5/16-115), to the Commission's complaint jurisdiction (220 ILCS 5/16-115B) and its rules governing bills (see 83 Ill. Adm. Code 220.410 (a)), and must maintain customer call centers that report to the Commission (220 ILCS 5/16-123). It is in the context of these significant safeguards that the General Assembly provided for single billing by ARES. Consequently, the logical inference to be drawn from the General Assembly's failure to provide for single billing by unregulated gas suppliers is that the General Assembly did not consider single billing to be reasonable in the absence of the regulatory safeguards it applied to ARES.

In addition, because the General Assembly has not mandated that gas utilities implement single billing by suppliers, a gas utility has the right to bill its customers for its

⁵ H.B. 362 amends various sections contained in Articles III, V, VII, VIII, IX, and X of the Act, all of which apply to gas as well as electric utilities.

own services. The fundamental right of utility management to make business decisions, so long as they do not conflict with statutes or the Commission's rules, is wellestablished. See State Pub. Utils. Comm'n ex rel. City of Springfield v. Springfield Gas & Elec. Co., 291 III. 209, 234, 125 N.E. 891, 901 (1919) ("It must, however, be kept in mind in considering questions of business policy that the commission is not the financial manager of the corporation, and it is not empowered to substitute its judgment for that of directors of the corporation.") For example, in a case challenging an Illinois utility's policy regarding security deposits, the United States Court of Appeals for the Seventh Circuit concluded that, despite Commission regulation of security deposits, "[t]he decision to require security deposits to insure credit and its application of this policy in any particular case is strictly a private management decision to be made by [the utility] in its own normal business operation." Particular Cleaners, Inc. v. Commonwealth Edison Co., 457 F.2d 189, 190-91 (7th Cir. 1972). Similarly, despite Commission regulation of the content of utility bills, a utility's billing policies that do not conflict with Commission rules are decisions within the right and responsibility of the utility's management to make. The Commission clearly recognized the right of a gas utility to bill its own customers for the services it renders when it rejected single billing by suppliers in Peoples Gas' Small Customer Transportation Program, stating, "We will not deter Respondent from billing its customers." The Peoples Gas Light & Coke Co., Docket No. 97-0297 (slip op. at 9, 1998 Ill. PUC LEXIS 685, *23-24. The HEPO fails to identify any comparable case or context in which this Commission has precluded a utility from billing its own customers for the services it renders, absent a statutory mandate that it do SO.

Finally, as a matter of law, the fact that the General Assembly did not impose a single billing obligation on gas utilities demonstrates that the General Assembly affirmatively intended not to impose such an obligation. Illinois Bell Tel. Co. v. Commerce Comm'n, 203 Ill.App.3d 424, 438, 561 N.E.2d 426, 436 (2nd Dist. 1990) ("the expression of one thing in an enactment excludes any other, even if there are no negative words prohibiting it"); Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill.2d 141, 152, 688 N.E.2d 90, 95 (1997) ("[T]he inference that all omissions should be understood as exclusions stands despite the lack of any negative words of limitation."); 2a N.J. Singer, Sutherland on Statutes and Statutory Construction, §§ 47.23, 47.25 at 217, 234 (5th Ed. 1992). Because the Commission is a creature of statute, it lacks jurisdiction or power beyond that expressly conferred on it by statute. Commerce Comm'n ex rel. East St. Louis v. East St. Louis & C. Ry. Co., 361 III. 606, 611 (1935); Union Elec. Co. v. Commerce Comm'n, 77 Ill.2d 364, 396 N.E.2d 510 (1979); Peoples Energy Corp. v. Commerce Comm'n, 492 N.E.2d 551, 142 Ill.App.3d 917 (1st Dist. 1986). Consequently, the Commission cannot lawfully extend its jurisdiction to impose a single bill requirement on gas utilities that the General Assembly declined to impose.

B. The HEPO's Position on Single Billing by Suppliers Deviates from the Commission's Past Policy without Justification.

The HEPO also fails to credibly justify or explain why the Commission should alter its historic position on single billing by gas suppliers in this case. This is a critical issue, because the Commission recently determined that gas utilities should <u>not</u> be required to offer single billing to gas suppliers as part of its review of the Peoples Gas Small Customer Transportation Program in Docket No. 97-0297. There, the single

billing issue was hotly contested, and imposition of a single billing requirement was squarely rejected by the Commission:

... The Commission is very concerned about the information that will be provided to small-volume customers, as compared to customers taking transportation under the Company's pre-Pilot transportation programs who tend to be more sophisticated utility customers. The Commission also agrees that Peoples has a right to bill its customers if it so chooses. Peoples bill would provide valuable cost data to the Pilot participant. We will not deter Respondent from billing its customers.

The Peoples Gas Light & Coke Co., Docket No. 97-0297 (slip op. at 10), 1998 Ill. PUC LEXIS 685, *23-24 (Emphasis added); Nicor Gas Ex. E, p. 16 (Harms Rebuttal).

As an administrative agency, the Commission is not absolutely bound by its *Peoples Gas* decision, but well-established principles of law dictate that it cannot lawfully change its policy without providing a reasoned basis as to why it has done so. *Chemetco v. Pollution Control Bd.*, 140 Ill. App. 3d 283, 289, 488 N.E.2d 639, 643 (5th Dist. 1986); *Greater Boston Television Corp. v. FCC*, 444 F. 2d 841, 852 (1070), *cert. denied* 403 U.S. 923 (1971); *Motor Vehicle Manufacturers Assoc. et al. v. State Farm Mutual Auto. Ins. Co. et al.*, 463 U.S. 29, 55, 103 S. Ct. 2856; 77 L. Ed. 2d 443 (1983). In this case, the HEPO does not identify any reasoned basis that would justify a change in policy. Moreover, the legitimate consumer-protection concerns expressed by the Commission in the Peoples Gas order are even more significant in the Customer Select program, which -- unlike the Peoples Gas Small Customer Transportation program -- serves residential customers. See *The Peoples Gas Light & Coke Co.*, Docket No. 97-0297 (Slip op. at 4, 10), 1998 Ill. PUC LEXIS 685, *9, 23-24.

While the HEPO (p.28) attempts to justify single billing by suppliers on the grounds that it is desired by customers and necessary to stimulate competition among suppliers, neither reason is borne out by the record. Not one of the 114,000 Customer Select participants has contacted the Commission to complain that single billing by gas suppliers is not available. Nicor Gas Ex. E, p. 17 and Rebuttal Ex. AEH-5 (CCSSI-1) (Harms Rebuttal). And while it is clear that suppliers would like to offer single billing, there is no evidence that any supplier decided not to participate in the Customer Select program because of the billing arrangements. In fact, each year of the pilot program, the number of participants and suppliers has increased. Nicor Gas Ex. E, p. 17 (Harms Rebuttal).

Moreover, the HEPO fails to address the significant bias inherent in its decision regarding single billing. Under the Company's present and proposed Customer Select tariffs, every Customer Select supplier is and will be entitled to bill its own customers for the service (gas commodity) it provides. Likewise, Nicor Gas should have the right to bill its customers for the service (gas transportation) it provides. This arrangement is competitively fair and even-handed, and respects the value that each entity places on its relationship with its customers. If a supplier believes that its customers value the convenience of receiving and paying a single bill, the supplier may -- purely at its own option -- enter into a billing agreement with the Company, and the Company will issue the customer a single bill. Under the HEPO, in contrast, only the supplier would have the right to bill its own customers, while Nicor Gas would be compelled to relinquish its right to bill its own customers and let suppliers bill on its behalf.